

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JUL 2 2001

PATRICK FISHER
Clerk

BYRON KYLE GAY,

Petitioner - Appellant,
vs.

BOB FURLONG; ATTORNEY
GENERAL OF THE STATE OF
COLORADO,

Respondents - Appellees.

No. 00-1498
(D.C. No. 00-Z-1732)
(D. Colo.)

ORDER AND JUDGMENT*

Before **EBEL, KELLY, and LUCERO**, Circuit Judges.**

Mr. Gay, an inmate proceeding pro se, seeks to appeal from the district court's denial of his habeas petition.¹ Mr. Gay is presently serving a seven-year prison sentence for second-degree burglary in a Colorado state prison. R. doc. 8,

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

¹ Mr. Gay's motion to amend his opening brief is granted.

at 2. He received this sentence, which includes five years of probation, after his community corrections sentence was terminated. Id. at 1-2.

Because the parties are familiar with the facts, we do not recite them here. In his habeas petition, Mr. Gay asserted three bases for relief: (1) that he was unable to obtain relief through state post-conviction procedures; (2) that he was resentenced in violation of Colo. Rev. Stat. § 17-27-105(1)(e); and (3) that he was resentenced in violation of the double jeopardy clause of the United States Constitution. R. doc. 4, at 6-10. The district court rejected Mr. Gay's petition on all three grounds. We have reviewed the district court's order, the record, and Mr. Gay's habeas petition and COA application filed on appeal. For substantially the same reasons given by the district court, we conclude that Mr. Gay has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). We therefore GRANT Mr. Gay's motion for leave to proceed in forma pauperis, DENY his application for a COA, and DISMISS his petition. We also DENY Mr. Gay's Request to Enter Default against the respondents.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge